

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 166 OF 2021

**NATIONAL HOUSING CORPORATION.....1ST PLAINTIFF
ATTORNEY GENERAL.....2ND PLAINTIFF**

VERSUS

**APPOLLO HOSPITAL
CENTRE COMPANY LIMITED.....DEFENDANT**

Date of Last Order: 23.06.2022
Date of Judgment: 25.07.2022

JUDGMENT ON SUMMARY SUIT

V.L. MAKANI, J

The plaintiffs have filed a plaint by way of a Summary Suit Procedure under Order XXXV of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). The plaintiffs' claim against the defendant is for payment of **TZS 8,370,696.61** being rent arrears and **TZS 100,000,000/=** as general damages. The plaintiff is also claiming for interest at bank rates on the principal amount claiming from the date of the filing of the suit to the date of full payment, costs of the suit and any other relief(s) deemed fit by the court.

According to Order XXXV Rule 2(2) of the CPC, the defendant was supposed to obtain leave of the court to defend the suit within 21 days, and failure to defend the suit would entitle the plaintiff with judgment and decree as prayed in the plaint.

It is apparent from the record that leave to defend the suit was not obtained though the defendant was duly served through the Managing Director, one George Charwe. The defendant never entered appearance or showed any interest to defend the suit. Ms. Killato, State Attorney, impressed upon the court that officers of the defendant and their advocate were seen in the court premises, but since they never appeared in court and no information was availed of their whereabouts, they cannot be recorded as to have entered appearance in court. In the absence of the defendant Ms. Killato prayed for judgment and decree as in the plaint and she supported her prayers with the case of the **Board of Trustees of Public Service Social Security Fund vs. Unique Consultancy Limited & Managing Director Unique Consultancy Limited, Civil Case No. 150 of 2019 (HC-DSM)** (unreported).

The plaintiff has also prayed for general damages at TZS 100,000,000/=. However, as stated in the cases of **Zuberi Augustino vs. Anicet Mugabe [1992] TLR 137**), **Masolele General Supplies vs. African Inland Church [1994] TLR 192** and **Bamprass Star Service Station vs. Mrs. Fatuma Mwale [2000] TLR 96**), once the amount in general damages is specified as is in the present case, it ceases to be general but specific damages which ought to be pleaded and proved. In this instance, there is nothing in the pleadings or in the oral submissions by Ms. Killato which proves how the plaintiff arrived at the amount of TZS 100,000,000/=. As such the court cannot award any damages or at all.

For the reasons stated above and considering that leave to defend was not obtained, the court thus enters Judgment and Decree in favour of the plaintiff as follows:

1. Payment by the defendant of TZS **Eight Million Three Hundred and Seventy Thousand, Six Hundred Ninety Six and Sixty One Cents (TZS 8,370,696.61)** being rent arrears.

2. Payment by the defendant of interest on the principal sum as in (1) above at the bank rates from the date of filing the suit to the date of full payment.
3. Payment by the defendant of costs of this suit.

It is so ordered.



A handwritten signature in blue ink that reads "V.L. Makani". The signature is written in a cursive style with a horizontal line under the name.

V.L. MAKANI
JUDGE
25/07/2022